



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TJR

Docket No: 6698-98

13 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 30 April 1969 at the age of 21. Your record reflects that on 19 November 1969 you received nonjudicial punishment (NJP) for a 21 day period of unauthorized absence (UA). The punishment imposed was \$100 forfeiture of pay and correctional custody for 30 days.

Your record also reflects that on 10 July 1970 you were convicted by summary court-martial (SCM) of assault and sentenced to reduction to paygrade E-1, confinement at hard labor for a month, and forfeitures totalling \$80. On 30 July 1970 you received NJP for a three day period of UA. The punishment imposed was forfeitures totalling \$50, which was suspended for six months.

On 17 March 1970 you submitted a written request for an undesirable discharge for good of the service in order to avoid trial by court-martial for a 79 day period of UA. Prior to submitting this request, you consulted with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a

discharge. Your request was granted and your commanding officer was directed to issue you an undesirable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 1 April 1971 you were so discharged.

The Board, in its review of your entire record and application considered all mitigating factors, such as your contention that you would like your discharge upgraded and changed to a medical discharge. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your record of misconduct and your request for discharge to avoid trial for your lengthy period of UA. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Marine Corps when your request was granted and you should not be permitted to charge it now. The Board also concluded that your current medical condition did not cause or contribute to your misconduct. Additionally, an administrative separation takes precedence over any processing for separation by reason of physical disability. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director